PRIVY COUNCIL REPORT

JAMES CHIA SHIH CHING v. LAW SOCIETY OF SINGAPORE

[P.C. (Lord Scarman, Lord Elwyn-Jones, Lord Keith of Kinkel, Lord Bridge of Harwich and Lord Brightman) April 29 & 30, & June 10, 1985]

[Privy Council Appeal No. 66 of 1984]

Legal Profession – Advocate and solicitor convicted of cheating – Disciplinary proceedings – Disciplinary Committee determining that advocate and solicitor should be reprimanded – Whether Law Society could apply for review of determination – Meaning of "person who made the written application or complaint" – Legal Profession Act (Cap. 217), Part VII, ss. 84(1), 86, 87, 88, 90, 94, 96 & 97.

The appellant in this case, an advocate and solicitor, was convicted by a District Court of an offence of cheating contrary to section 420 of the Penal Code. His appeal against conviction was dismissed. Upon the application of the Council of the Law Society the Chief Justice appointed a Disciplinary Committee to hear and investigate the matter. After a full hearing the Disciplinary Committee determined that, while no cause of action of sufficient gravity existed for disciplinary action to be ordered against the appellant under section 84(1) of the Legal Profession Act, the appellant should be reprimanded. The Law Society applied to a judge of the High Court for a review of the determination of the Disciplinary Committee and for an order of the court directing the Law Society to make an application under section 98 of the Act. The High Court set aside the determination of the Disciplinary Committee and directed the Law Society to make an application to the court under section 98 of the Act for the appellant to show cause why he should not be dealt with under section 84(1) of the Act. The Law Society therefore made an application under section 98 of the Act and the High Court ordered the appellant to show cause and eventually the High Court ordered that he be struck off. The appellant appealed. The issue in the appeal is whether the Law Society is a person entitled to invoke section 97 of the Act and as to the true meaning and effect of the words "the person who made the written application or complaint". The High Court chose the wider meaning of the words as being consistent with the smooth working of the statutory system. On appeal to the Privy Council,

Held: the language of Part VII of the Legal Profession Act is too strong and clear to permit of a policy interpretation of the words in section 97(1) of the Act which ignores the legislature's deliberate and consistent use of the term "application or complaint" as indicating an application or complaint made by a person under section 86(1) of the Act. The Law Society or its Council, in applying for the appointment of a Disciplinary Committee, is not exercising a right of application or complaint but is performing a statutory duty laid upon it in circumstances specified by the Statute. In the circumstances of this case therefore the High Court acted without jurisdiction and the appeal should be allowed.

Cases referred to in the High Court:

(1) *Shannon Realties* v. *Ville de St. Michel* [1924] A.C. 185.

(2) *In the matter of an Advocate and Solicitor* [1984] 1 M.L.J. 331, 338.

HIGH COURT (Wee Chong Jin C.J., Lai Kew Chai and Thean JJ. September 3, 1984).

George Carman Q.C. (*H.E. Cashin* with him) for the respondent.

Tan Kok Quan for the applicant.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgement of the Court): The Respondent, James Chia Shih Ching, is a non-practising advocate and solicitor of the Supreme Court, Singapore. He has been on the roll of advocates and solicitors since July 11, 1973. In April, 1970 he joined the Legal Section of the Inland Revenue Department of the Government of the Republic of Singapore as a Legal Officer. On May 1, 1979 he was promoted to the post of Senior Legal Officer to head the Legal Section. He remained as head of the Legal Section until his interdiction on August 8, 1980 and was dismissed from Government service on February 11, 1983.

On November 14, 1981, the Respondent was convicted on a charge under section 420 of the Penal Code, Cap. 103.

The charge reads as follows:–

"that you, on or about March 7, 1980, in Singapore, cheated Tong Eng Brothers Pte Ltd by deceiving the company into believing that a sum of Pound Stg. 800 was due and payable to one D.C. Potter, Queen's Counsel as legal fees for work rendered when you knew that such sum was not in fact determined nor due and payable and thereby dishonestly induced the company to deliver to you a bank draft for Pound Stg. 800 which it would not do if it were not so deceived and thereby committed an offence punishable under section 420 of the Penal Code."

He was sentenced to one day's imprisonment and was fined $3,000. Being dissatisfied with the conviction and sentence, he appealed to the High Court which, on October 20, 1982, dismissed the appeal.

As the Respondent was convicted of an offence involving fraud or dishonesty, the Council of the Law Society of Singapore, in discharge of its statutory duty imposed by sub-section 86(5) of the Legal Profession Act, Cap. 217 ("the Act"),

applied to the learned Chief Justice to appoint a Disciplinary Committee to hear and investigate the matter.

The Disciplinary Committee was appointed and its hearing took place on April 30, 1983. In July, 1983 the Disciplinary Committee delivered its report to the learned Chief Justice and the Law Society. The Committee found that no cause of sufficient gravity existed for disciplinary action under section 84 of the Act and that the Respondent should only be reprimanded. In doing so, the Disciplinary Committee made a determination under section 93(1)(b) of the Act.

The Disciplinary Committee set out its findings and determination in the following terms:

"FINDINGS

1. We find that this is not a case in which we are entitled to go behind the conviction to enquire if it was correctly made.

2. We find, however, that on a consideration of the whole of the circumstances of this case, and bearing fully in mind that a conviction of cheating is a conviction which, in all but exceptional circumstances. (*In Re Weare; Re a Solicitor* [1893] 2 Q.B. 439) would necessarily entail disciplinary action under section 93(1)(c), read with section 84 of the Act, such circumstances do exist in this case, which may be summarised as follows.

(a) The basis of the said conviction was that there was no sum of money due to Mr Potter as at the date on which the Respondent deceived Tong Eng as to Mr Potter's fee, but the degree of turpitude in such deception and in requesting the issue of the draft, which was in Mr Potter's favour, was in our view minimal, because the Respondent had no way of knowing at that time whether Mr Potter's fee for the opinion which had been delivered would be 800 Pounds, 400 Pounds, or more or less than either of those sums, and in particular he had no way of knowing that Mr Potter would waive his fee altogether, but rather had no reason to expect that a fee would not be charged in the ordinary course;

(b) The minimal sentence passed on the Respondent is a clear indication that the District Judge did not regard the offence as much more than a minor one within the ambit of the Section;

(c) The Public Prosecutor did not appeal against the sentence, and it was not criticised by the High Court as being too lenient, and (d) Tong Eng has not suffered any material detriment.

We are of the opinion, and so find, having carefully and anxiously considered the whole of the evidence before us, that while no cause of sufficient gravity exists for disciplinary action under section 84 of the Act, the Respondent should be and is hereby REPRIMANDED."

As the Law Society was dissatisfied with the determination of the Disciplinary Committee, it applied to a Judge under section 97 of the Act by Originating Summons No 528 of 1983. In those proceedings the Law Society and all three members of the Disciplinary Committee were heard by the learned Chief Justice who ordered that the determination of the Disciplinary Committee made on July 2, 1983 be set aside. Acting under section 97(3)(b) of the Act, the learned Chief Justice directed the Law Society to make an application under section 98 of the Act for an order calling upon the Respondent to show cause why he should not be dealt with in the manner prescribed by the Act.

By Originating Summons No 54 of 1984 the Law Society accordingly made the *ex parte* application. On February 10, 1984 the Respondent was ordered to show cause.

In the show cause proceedings before us, Mr George Carman on behalf of the Respondent submitted that the Law Society had no *locus standi* or jurisdiction to apply under section 97 of the Act nor to plead before us. In other words, it was submitted that The Law Society could not in law apply for a judicial review of the determination of the Disciplinary Committee.

Before we consider the submissions in detail, we turn first, as is our duty, to the Act, Part VII of which deals with disciplinary proceedings which may be taken against any advocate and solicitor in certain circumstances. All advocates and solicitors are subject to the control of the Supreme Court and an advocate and solicitor may be liable on due cause being shown to be struck off the roll or suspended from practice for any period not exceeding two years or censured.

Any application for disciplinary action by any person and any complaint of the conduct of an advocate and solicitor in his professional capacity shall in the first place be made to the Law Society and its Council shall refer the application or complaint to the Inquiry Committee: see section 86(1) of the Act for its full terms. The Supreme Court, a Judge or the Attorney-General may also initiate disciplinary proceedings: section 86(2).

We want to mention one other route by which disciplinary proceedings may be initiated as it has not featured in the arguments before us. Under section 87(1)(b) of the Act, which remained unamended by Act No. 11 of 1979, the Inquiry

Committee may decide "of its own motion" to inquire into any matter relating to the professional conduct of any advocate and solicitor and report its findings to the Council of The Law Society. In this situation, there is evidently no outside applicant or complainant and if the Council determines that there should be a formal investigation by a Disciplinary Committee, the Law Society must be the applicant or complainant.

For our present purposes, we do not think it necessary to set out the elaborate procedures of the Inquiry Committee.

We have to mention two sets of amendments to the Act which were enacted by Act No. 11 of 1979. By section 86(5) of the Act, promulgated by Parliament in 1979, provision was made to dispense with the Inquiry Committee stage of any disciplinary proceedings where an advocate and solicitor has been convicted of the offence of criminal breach of trust or of any other offence involving fraud or dishonesty. Section 86(5) is in these terms:–

"Notwithstanding this section, whenever an advocate and solicitor has been convicted of the offence of criminal breach of trust punishable under section 409 of the Penal Code or of any other offence involving fraud or dishonesty, the Council shall forthwith apply to the Chief Justice to appoint a Disciplinary Committee which shall hear and investigate the matter."

The other set of amendments made in 1979 effected two changes in the law. First, the Council was thenceforth required to determine that there should be a formal investigation if the Inquiry Committee so recommended. The Council's former right to review and disagree with the recommendation of the Inquiry Committee was taken away. Secondly, and on the other hand, the Council may disagree with the Inquiry Committee, if the latter recommends that a formal investigation is not necessary, and in such a case may request the learned Chief Justice to appoint a disciplinary committee. These changes are set out in section 88(1A)(a) and (b) of the Act which are in these terms:

"If the Inquiry Committee in its report recommends –

(a) that there should be a formal investigation, then the Council shall determine accordingly under subsection (1); or

(b) that a formal investigation by a Disciplinary Committee is not necessary, the Council may, if it disagrees with the recommendation, request the Chief Justice to appoint a Disciplinary Committee."

There are procedures in the Act whereby "complainants", and here we are only for convenience adopting the abbreviation of the marginal notes to the Act, who are dissatisfied with the decisions of the Council of the Law Society or of the decisions of the Disciplinary Committee, may within a prescribed period apply to a Judge of the High Court. These procedures are set out in sections 96 and 97 of the Act.

Before we set them out in the following paragraphs, we should mention in passing that section 96, dealing, as it does, with that stage of disciplinary proceedings which is antecedent to the Disciplinary Committee stage, should have more appropriately found its place before section 91 of the Act.

Section 96 provides:

"(1) Where a person has made a written application or complaint to the Society and the Council has determined –

(a) that a formal investigation is not necessary; or

(b) that no sufficient cause for a formal investigation exists but that the advocate and solicitor concerned should be ordered to pay a penalty,

that person, if he is dissatisfied with the decision may within fourteen days of being notified of the Council's determination apply to a judge under this section.

(2) Such an application shall be made by originating summons and shall be accompanied by an affidavit or affidavits of the facts constituting the basis of the application or complaint and by a copy of the application or complaint originally made to the Society together with a copy of the Council's reasons in writing supplied to the applicant under subsection (2) of section 88.

(3) The application accompanied by a copy of each of the documents referred to in subsection (2) shall be served on the Society.

(4) Upon the hearing of the application the judge may make an order –

(a) affirming the determination of the Council; or

(b) directing the Society to apply to the Chief Justice for the appointment of a Disciplinary Committee,

and such order for the payment of costs as may be just.

(5) If the judge makes an order directing the Society to apply to the Chief Justice for the appointment of a Disciplinary Committee the applicant shall have the conduct of proceedings before the Disciplinary Committee and any subsequent proceedings before the court under section 98, and any such proceedings shall be brought in the name of the applicant.

Section 97 provides:

"(1) Where a Disciplinary Committee has determined –

(a) that no cause of sufficient gravity for disciplinary action exists under section 84; or

(b) that while no cause of sufficient gravity for disciplinary action exists under that section the advocate and solicitor should be reprimanded,

and the person who made the written application or complaint is dissatisfied with the determination he may within fourteen days of being notified of the Disciplinary Committee's decision apply to a judge under this section.

(2) Such an application shall be made by originating summons and shall be served on the Society and the secretary of the Disciplinary Committee who shall thereupon file in court the record and report of the hearing and investigation by the Disciplinary Committee.

(3) Upon the hearing of the application the judge, after the applicant and the Disciplinary Committee and, if it desires to be heard, the Society, may make an order –

(a) confirming the report of the Disciplinary Committee;

(b) directing the applicant to make an application under section 98; or

(c) directing the advocate and solicitor concerned under subsection (1) of section 98 to show cause,

and such order for the payment of costs as may be just.

(4) If the judge makes an order under paragraph (b) or (c) of subsection (3) the applicant shall have the conduct of proceedings under section 98 and any such proceedings shall be brought in the name of the applicant."

We now return to the submissions of counsel for the Respondent on the competence of the Law Society. It was submitted on his behalf that the Law Society is not "the person who made the written application or complaint ..." within the meaning of that expression in section 97(1) of the Act. If that interpretation is right in law, the Law Society was not competent to have applied under section 97 of the Act and is not properly before us and the entire proceedings must fail *in limine*. In support of this reading of the expression, Mr George Carman argued that we should look at the whole of section 97 of the Act, particularly sub-sections (2), (3) and (4), and the opening words of section 96, underlining the words "to the Society", to which section 97, he submitted, is inextricably linked. If the Law Society is "the person ..." referred to in section 97, it is absurd, according to him, that sub-section 97(2) should require it to serve the originating summons on itself and equally absurd to provide in the following sub-sections (3) and (4) that the Law Society "may be heard" and that it should have the carriage of the proceedings.

Counsel for the Respondent also relied heavily on section 94 which deals with what the Law Society must and need not do after the determination of the Disciplinary Committee. Section 94 provides:

"(1) If the determination of the Disciplinary Committee under section 93 is that cause of sufficient gravity for disciplinary action exists under section 84 the Society shall without further direction or directions proceed to make an application in accordance with section 98.

(2) If the determination of the Disciplinary Committee under section 93 is that no cause of sufficient gravity for disciplinary action exists under section 84 it shall not be necessary for the Society to take any further action in the matter unless so directed by the court."

Counsel further submitted that Parliament has not expressly given any power to the Law Society to seek a review of or to appeal against the determination of the Disciplinary Committee, in contradistinction to the provisions of section 88(1A)(b) under which The Law Society is expressly empowered to disagree with the recommendation of the Inquiry Committee.

We are unable to accept the restrictive interpretation of section 97 of the Act as canvassed by Mr George Carman. In our view, the words in section 97(1) of the Act, to which we have referred, on their true construction include The Law Society where disciplinary proceedings were initiated under section 86(5) by the Council. Mr Tan Kok Quan, counsel for the Law Society, in his reply submitted that by section 86(5) the Law Society, through its executive body, is made the person who made the application or complaint. He argued that there is no justification whatsoever to discriminate against the Law Society so far as the right to seek a judicial review of the determination of the Disciplinary Committee is concerned. He further said that the implications of the Respondent's construction of section 97, if it be right, are even more grotesque if one bears in mind that the source and origin of a disciplinary action under section 86(5) is the conviction of an advocate and solicitor of the criminal offence of criminal breach of trust or any other criminal offence involving fraud or dishonesty. Mr Tan submitted that it is wholly untenable, and is against the scheme of Part VII of the Act, if in those serious cases of professional misconduct the determination of a Disciplinary Committee should be final and binding against the Law Society and the Supreme Court. We find there is great force in these submissions.

Under sub-sections (1), (2) and (5) of section 86 of the Act, there are, it will be recalled, three

categories of persons who may make an application or complaint against an advocate and solicitor, and for our purposes only sub-section (5) requires elaboration. The application by the Council under sub-section 86(5) is, in effect, by the Law Society, which is a body corporate, seeing that the Council is its executive or management arm. That application must be considered as an "application or complaint" that the advocate and solicitor concerned has been convicted of an offence of the nature as described in sub-section (5). Such an application leap-frogs over the Inquiry Committee stage. In addition, and as we have stated earlier in our Judgment, the Inquiry Committee may act on its own motion under section 87(1)(b). If the Inquiry Committee acts on its own and makes a determination under section 88(1)(c), the Council will have to apply to the learned Chief Justice under section 90 for the appointment of the Disciplinary Committee. Such an application again must be made by the Law Society which must be considered as having made the application or complaint.

In our view "the person" referred to in section 96(1) of the Act cannot include the Law Society which makes the application through its Council to the learned Chief Justice under section 86(5) or section 90 of the Act. Further, in the case of an application under section 90, the provisions of section 96 are plainly irrelevant.

The construction of the words "the person who made the written application or complaint" in section 97(1) must include the Law Society, having regard to the general scheme of the Act and particularly having regard to sections 86(5), 87(1)(b) and 90 of the Act. The exclusion of the Law Society, as canvassed by Mr George Carman, would introduce uncertainty, friction or confusion.

We are persuaded that as a matter of construction we must in the present case adopt the rule of construction laid down in *Shannon Realties* v. *Ville de St Michel*[1]. It was held that where alternative interpretations are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating, and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system.

We are also of the view that the references to the Law Society, directly or indirectly in sections 97(2) to (4) are, in proceedings similar to those before us, merely procedural surplusages which may be ignored because these references do not involve any substance or any matter of principle. Accordingly, we are of the opinion that the Law Society had *locus standi* or jurisdiction to apply under section 97 and is properly and competently before us.

The next question is whether the Respondent has shown any cause why he should not be dealt with under section 84 of the Act. In considering this question, we reiterate what the High Court of three Judges said *In the Matter of an Advocate and Solicitor.*[2] In a judgment delivered by the learned Chief Justice, it was said:

> 'Whether or not an advocate and solicitor's conviction of a criminal offence implies a defect of character which makes him unfit for his profession depends on the facts and circumstances of that particular case and the nature of that criminal offence."

The Respondent in showing cause before us did not deny the conviction, but his counsel invited us to look at the inferences which ought to be made from the findings of the District Judge who convicted the Respondent, particularly the background that the Respondent only did a favour for a friend, which started it all, and the claim that he did not intend to make any personal gain in relation to the sum of £800.

We now set out briefly the facts and circumstances of this case. In 1978 the Respondent was introduced to one Teo Tong Wah ("Teo") by a mutual friend, one Dr. Tan Poh Lin, the then Deputy Chairman of the Industrial and Commercial Bank Limited. Teo was a director of Tong Eng Brothers Limited (hereinafter referred to as "the Company") which had developed a commercial complex at Cecil Street, Singapore and known as "Tong Eng Building".

Teo told the Respondent of the Company's intention to cease operations and conferred with the Respondent on the operation of the cessation provisions in the Income Tax Act, Cap. 141, in relation to a scheme for the avoidance of tax on the profits of the Company. Teo accepted the Respondent's advice that the Company should consult a Queen's Counsel. At Teo's request, the Respondent assisted in the preparation of the brief to counsel. Around Christmas 1979, the Respondent produced a brief in Teo's house. Both of them settled the brief, after which the Respon-

dent despatched it to counsel's chambers in London.

During the period when the brief to counsel was prepared, the Respondent in his capacity as the Head of the Legal Section of the Inland Revenue Department had in his possession the Department's Tax file of the Company.

In January, 1980, the brief reached the chambers of Mr Michael Nolan. In the course of his official work, the Respondent had come to know Mr Donald Charles Potter of those chambers and the chief clerk, Mr Joseph Anthony Brown. On January 18, 1980 Mr Brown made a note in his diary that the instructions was a matter personal to the Respondent, following a trunk call conversation with the Respondent who phoned him.

Mr Potter gave his written opinion on February 14, 1980 which was sent to the Respondent. Shortly after the receipt of the opinion, the Respondent went to Teo's house and considered the opinion. Teo thought that the opinion was ambivalent whilst the Respondent, on his part, did not fully agree with the opinion. But Teo thought that the cessation of the operations of the Company could be carried out.

After reading the opinion to Teo, the Respondent handed to Teo a note with the name "Potter" and the figures "Pound Stg. 800" written on it. In the course of handing over the note, the Respondent said that the sum was for payment to the Queen's Counsel for his fees and told Teo to make the payment. Teo subsequently mislaid the note. In the event, Teo obtained a bank draft for Pound Stg. 800 in favour of Mr Potter which he handed to the Respondent on the latter's representation to him that the fee had to be paid to Mr Potter for the opinion. On March 10, 1980 the Respondent wrote a letter to Mr Brown as follows:

"Dear Tony,

RE: CESSATION OF BUSINESS

I am in receipt of the opinion by Mr Charles Potter a week ago on the above.

I believe the average fee charged by, Mr Potter is Pound Stg. 400 with zero VAT. I attach herewith a bank draft for Pound Stg. 800 leaving a remainder of Pound Stg. 400 to be credited to my account which may be utilised in the near future for other purposes.

Thank you.

Yours sincerely

JAMES S C CHIA."

On receipt of the abovementioned letter Mr Brown consulted Mr Potter on the question of the charging of his fees. As Mr Potter was under the impression that the opinion rendered concerned either a private matter or a family matter of the Respondent, he decided to waive the fees. It is a fair inference that that impression had its source in Mr Brown. Accordingly, Mr Brown wrote to the respondent on March 13, 1980 along the following terms:

"Dear Mr Chia

Cessation of Business

Section 35 of the Income Tax Act

I thank you for your letter of March 10, 1980 enclosing your cheque for Pound Stg. 800. I have credited your account with this full figure because Mr Potter does not wish to charge anything for the Opinion in the above matter.

I hope you are keeping well and look forward to seeing you again soon.

Yours sincerely

Tony Brown"

To that letter the Respondent promptly replied on March 20, 1980 as follows:

"RE: CESSATION OF BUSINESS UNDER SECTION 35 OF THE INCOME TAX ACT

I thank you for your letter of March 13, 1980 on the above.

2. I am indeed grateful to Mr Potter, QC, for his kind gesture.

3. In view of the high interest rates prevailing in Britain I would be delighted if you could kindly transfer the Pound Stg. 800 to my external deposit account in Midland Bank Limited, 82, Strand Branch, 82, Strand London, WC2R OEH. My deposit account number is 23027554 under the name of S.C.J. Chia. Kindly effect the transfer before April 1.

4. I enclose herewith two photographs of Mr Potter taken by me when he was in Singapore in October. Kindly forward it to him.

Thank you."

Pursuant to the Respondent's request, Mr Brown caused the sum of Pound Stg. 800 to be

paid into the respondent's bank account in London on March 28, 1980.

For the Respondent, it was urged by Mr Carman that the Respondent had made the suggestion for payment as he had had no previous experience of paying counsel personally. In his official capacity, he had merely passed on the fee notes to his accounts section to effect payment. In this case, he had made the suggestion to discharge what to him was a 'moral' debt due to counsel.

In our view, the matter was not that innocent. The learned District Judge, who tried the Respondent, had found that the Respondent was evasive and untruthful. He found that the Respondent had led Mr Brown to believe that the brief was a matter personal to him by saying to Mr Brown that it was a "personal matter". By not disclosing that the matter was that of a company of a friend, the Respondent had, according to the learned District Judge, suppressed the truth in order to suggest a falsehood, leading eventually to the fee for the opinion being waived. We agree with that finding and the inference drawn by the learned District Judge.

The crucial findings of the learned District Judge are set out in the following passages in his Grounds of Decision:

"(vii) The evidence shows that the accused had asked Mr Teo for a bank draft for £800 to be sent to Mr Potter in payment of the fees for the Opinion. The accused had done so despite the following facts:

(i) The fee note had not been received;

(ii) The accused did not expect Mr Brown to send the fee note until 9 – 12 months after the Opinion was rendered; and

(iii) The accused did not know the fee to be charged by Mr Potter as it was the first time he had consulted Mr Potter other than on a governmental matter.

The accused explained that he had asked Mr Teo to pay the fees then because he was anxious that Mr Potter be paid immediately whatever it was. What was the cause for this anxiety? The accused stated that the main reason was that he was personally responsible to Mr Potter for the payment of the fees. He declared, "I do not want this matter to be hanging on my head". In this connection, it must not be forgotten that the accused and Mr Teo are good friends and they had mutual trust. Furthermore, the accused was fully aware that Mr Teo was of considerable financial standing. Why then was the accused so determined to discharge his responsibility so urgently? The accused was rightly asked the following questions (Notes of Evidence, page 225):

'Q. Were you anxious that in the end when the fee note came, Mr Teo would not pay you?

A. No.

Q. Were you anxious that Tong Eng will not permit Mr Teo to pay you?

A. No. I was dealing with Mr. Teo.

Q. Then what caused your anxiety?

A. I was concerned in putting the £800 in the hands of Mr Potter.'

In the end, the accused did not furnish the answer as to why he had wanted Mr Teo to immediately settle the fee which had yet to be determined. The accused was asked why is it that when he was despatching the instructions to Mr Potter he did not ask that a fee note be forwarded together with the Opinion if indeed he was so anxious to pay the fee. He said that he did not because he did not think of it at that time. When it was asserted that the accused knew it could be done and that it was not improper to do so, the accused answered, "I have never done it before." He also claimed that he had not previously or during that period done such a thing. The accused was then confronted with his letter (Exhibit P40) to Mr Rippon Q.C. In paragraph three of that letter, the accused asked for an indication of Mr Rippon's fee in respect of a matter concerning the Inland Revenue Department. Faced with this document, the accused agreed that that he had done so. Why did he not do the same in this case? The accused stated that he could have done it but the fact that that was done in this fashion to his mind was not wrong. The point to note is that even if indeed the accused was anxious in discharging his responsibility, he could have first ascertained the amount of fees before asking Mr Teo for it. The following extract reveals that although he was anxious that the fee be paid and that he did not think it was unreasonable to first ascertain the fee, he did not do so (Notes of Evidence, page 228):

'Q. Why did you not write to Mr Brown on March 7, if you are anxious?

A. I did not consider that.

Q. Why not?

A. I could have if I wanted to but I did not.

Q. I fail to understand you. You wanted to discharge the debt as soon as possible. You knew Mr Teo will not fail to pay and at the other end, Mr Brown was not asking for payment. If your only anxiety was that the fee be paid, is it not natural to determine what fee was to be paid by asking for the fee note?

A. I could have but I did not.

Q. You will agree that it is not unreasonable to determine what the fee was first?

A. Yes, it will not be unreasonable.

Q. When you wanted to know Mr Rippon's fee, you did

not fail to write to Mr Rippon about his fees?

A. With regard to Mr Rippon's fee, I was asked by the accountant to ascertain from Mr Cobbett Mr Rippon's fee so that he could make provision.

Q. Here you are not making provision for it. You wanted to pay. In these circumstances, there is all the more reason to want to know what Mr Potter's fees were. Do you not agree?

A. When I mentioned the fees and fee note to Mr Teo stating that I had not received the fee note and suggested that £800 would be more than sufficient to cover the fee, Mr Teo did not disagree. He agreed to give me a bank draft.

Q. Why did you not first ascertain what the fees were?

A. I did not do it.

Q. Any particular reason?

A. No.

From this extract, it can be seen that the accused not only failed to give any reason for not ascertaining the fee before asking Mr Teo to pay £800, he had once again demonstrated the trait of not answering a question unequivocally. In the circumstances, I rejected the accused's claim that he had asked for the fees to be paid at that stage as he was anxious to discharge his debt."

Although the Respondent was informed of the waiver of the fees, he failed to inform Teo of the waiver. On the other hand he on his own instructed Mr Brown to deposit the £800 (belonging to the Company) into his own personal account in London without the knowledge of Teo.

In late May 1980, the Respondent in his official capacity went to London to attend a Privy Council hearing in connection with a tax matter. Just before he left for London, he suggested to Teo that he should take the opportunity to consult Mr Potter to clarify certain points in Mr Potter's opinion. Teo agreed to the suggestion. The Respondent conferred with Mr Potter on May 23, 1980. After the consultation, the Respondent asked Mr Brown for a fee note which was fixed by Mr Brown at £450. Mr Brown also raised another fee note of £350 in connection with another consultation with Mr Potter regarding the tax matters of Nakhoda Investments Pte Ltd which had no connection with Mr Teo or the Company.

On July 3, 1980 the Respondent transferred £450 from his deposit account to his checking account with the Midlands Bank with the intention to pay the fees of £450. This internal transfer was in his letter dated July 3, 1980. It was written 7 days before the Corrupt Practice Investigation Bureau commenced investigations on the Respondent on July 9, 1980. The investigations were multifaceted. It was on July 22, 1980 that the Respondent was questioned by the Corrupt Practice Investigation Bureau on the matters in connection with the £800. The Respondent at the trial claimed he did not intend to cheat Mr Teo or the Company. He was disbelieved by the learned District Judge.

We are satisfied on all the evidence that the Respondent deceived Teo, a director of the Company into believing that Mr Potter's fees were determined at £800 and were due and payable and thereby had dishonestly induced the Company to deliver to him a bank draft for the £800.

In the circumstances, we do not accept the view of the Disciplinary committee that the degree of turpitude for the deception was minimal. We also do not agree with the Disciplinary Committee that the minimal sentence passed on the Respondent was a clear indication that the learned District Judge did not regard the offence as much more than a minor one. We note that the Respondent's former counsel in his mitigation plea represented to the learned trial Judge and, we quote, that the Respondent "[would] not be able to follow his chosen career". The Respondent cannot have it both ways.

Having regard to all the circumstances of the case, we are of the view that the Respondent has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession within the meaning of sub-section (2)(a) of section 84 of the Act.

We come now to the question of sentence. It was urged on behalf of the Respondent that he is a young man, now aged 41, with little experience in settling counsel's fees, as a result of which he was convicted. It was also submitted that he was interdicted from duty with no pay with effect from August 8, 1980 and that he had suffered dismissal from Government service. The Respondent's emoluments withheld during his interdiction were forfeited at the time of his dismissal. It was also pointed out that he had voluntarily refrained from practising since his dismissal.

In our judgment, it would not be in the public interest or in the interest of the profession, on all the facts and circumstances of the present case, that the Respondent's name remains on the roll of advocates and solicitors. We find that his conduct was reprehensible. We accordingly order that his

name be struck off the roll of advocates and solicitors of the Supreme Court. We also order that he pays the costs of the present proceedings including the proceedings before the Disciplinary Committee.

(The respondent appealed to the Privy Council against the above decision.)

PRIVY COUNCIL APPEAL FROM SINGAPORE.

George Carman Q.C. (*H.E. Cashin* and *Duncan Matheson* with him) for the appellant.

Tan Kok Quan (*Lee Han Tiong* with him) for the respondent.

Cur. Adv. Vult.

Lord Scarman (delivering the Judgment of the Board): This is an appeal by an advocate and solicitor ("the solicitor") of the Republic of Singapore from an order of the High Court directing that he be struck off the roll of advocates and solicitors. The solicitor has put forward four grounds of appeal:-

(a) that in the circumstances of this case the Law Society, the respondent to his appeal, had no right to apply to the High Court for the order and that the High Court had no jurisdiction to make it (the jurisdiction point):

(b) that there was a failure of natural justice in the proceedings before the High Court:

(c) that the High Court failed to apply its mind "properly" to the findings of the Disciplinary Committee which had investigated the matter:

(d) that in any event the penalty of striking off was too severe in the circumstances.

The jurisdiction point is a pure question of statutory construction. Was the Law Society entitled to apply to the court under section 97 of the Legal Profession Act (Cap. 217), "the Act"? If the Society was not so entitled, the appeal has to be allowed: for, as Lai Kew Chai J. who delivered the judgment of the High Court recognised, "the entire proceedings [would] fail *in limine*". Their Lordships, therefore, decided to hear argument first on the jurisdiction point, treating it as a preliminary question, which indeed it is. After hearing full argument their Lordships concluded that in the circumstances of this case the High Court acted without jurisdiction, and that the appeal would have to be allowed. Their Lordships have not, therefore, given any consideration to the other grounds of appeal. The merits of the case for or against the solicitor have not been canvassed before their Lordships, who accordingly express no view upon any of the matters in issue other than the jurisdiction point. Upon conclusion of argument on the point, their Lordships announced their decision to allow the appeal, indicating that they would give their reasons later. This they now do.

The course of the proceedings in the case can be shortly stated. The appellant was admitted a solicitor (their Lordships will use this abbreviation for "advocate and solicitor") on July 11, 1973. On November 14, 1981 he was convicted by a district judge of an offence of cheating contrary to section 420 of the Penal Code. His appeal against conviction was dismissed on October 20, 1982.

Upon application by the Council of the Society pursuant to section 86(5) of the Act the Chief Justice appointed a Disciplinary Committee to hear and investigate the matter. The Society had the conduct of the proceedings as plaintiff or applicant (both terms are used) before the Committee. After a full hearing the Committee on July 2, 1983 determined that, while no cause of sufficient gravity existed for disciplinary action to be ordered against the solicitor by the Supreme Court under section 84(1) of the Act, the solicitor should be reprimanded; and the Committee reprimanded him.

Dissatisfied with the determination of the Committee, and being, as the Society submits, a person who had made the written application or complaint, the Society on July 15, 1983 applied to a judge of the High Court under section 97 of the Act for a review of the determination and for an order of the court directing the Society to make an application under section 98 of the Act.

On December 2, 1983 the High Court set aside the determination of the Disciplinary Committee and directed the Society to make an application to the court under section 98 for the solicitor to show cause why he should not be dealt with under section 84(1) of the Act; the sub-section empowers the Supreme Court upon cause shown to order that a solicitor be struck off, suspended from practice, or censured. The Society thereupon made application under section 98: the High Court ordered the solicitor to show cause: and on September 3, 1984 the High Court ordered that he be struck off.

The issue in the appeal is whether the Society

is a person entitled to invoke section 97 of the Act. If it is, the jurisdiction of the High Court to proceed to an order against the solicitor plainly exists: but, if it is not, the High Court was not competent to make the order. The point of principle in the case is whether the appeal (or review) procedure established by section 97 is available to the Society. It is a question as to the true meaning and effect of nine words in sub-section (1) of the section, namely "the person who made the written application or complaint".

Section 97 provides what may not inappropriately be described as an appeal procedure available to persons dissatisfied with the determination of a Disciplinary Committee that there should be no further investigation of their case against the solicitor. In effect, the Disciplinary Committee has in this case decided against disciplinary action by the court. In effect, the section enables certain persons to appeal against such a decision. The section is in these terms:-

"97. (1) Where a Disciplinary Committee has determined –

(a) that no cause of sufficient gravity for disciplinary action exists under section 84 of this Act; or

(b) that while no cause of sufficient gravity for disciplinary action exists under that section the advocate and solicitor should be reprimanded,

and *the person who made the written application or complaint* is dissatisfied with the determination he may within fourteen days of being notified of the Disciplinary Committee's decision apply to a judge under this section.

(2) Such an application shall be made by originating summons and shall be served on the Society and the secretary of the Disciplinary Committee wo shall thereupon file in court the record and report of the hearing and investigation by the Disciplinary Committee.

(3) Upon the hearing of the application the judge, after hearing the applicant and the Disciplinary Committee and, if it desires to be heard, the Society, may make an order –

(a) confirming the report of the Disciplinary Committee; or

(b) directing the applicant to make an application under section 98 of this Act; or

(c) directing the advocate and solicitor concerned under sub-section (1) of section 98 of this Act to show cause,

and such order for the payment of costs as may be just.

(4) If the judge makes an order under paragraph (b) or (c) of sub-section (3) of this section the applicant shall have the conduct of proceedings under section 98 of this Act and any such proceedings shall be brought in the name of the applicant."

The critical words are in sub-section (1). Their true meaning can, in their Lordships' view, be determined only by a study of the Act as a whole, and particularly of Part VII (sections 83 to 106) of the Act, which deals with disciplinary proceedings.

The respondent Society is a body corporate created by the Act and has among its statutory purposes that of maintaining and improving the standards of conduct and learning of the legal profession in Singapore: section 38 and section 39 (1) (a). The management of the Society is vested in the Council, (section 60), which is given wide and specific powers by sections 60 and 61. The Chief Justice and such other judges of the Supreme Court as the Society may elect are the visitors of the Society: section 40. This link between the Society and the judges of the Supreme Court reflects the control of the profession by the Supreme Court, and particularly by the Chief Justice which is a key principle of the legislation. This control, which is in practice exercised by the Chief Justice and judges of the High Court, is a notable feature of Part VII of the Act, to which their Lordships now turn.

In discussing the Act their Lordships will use the numbering of the sections used by the High Court, although, as their Lordships understand, a revised edition of the Act re-numbered so as to incorporate subsequent (textual) amendments is now available. A characteristic of the drafting of Part VII of the Act is the vocabulary of words and phrases which are used in the sections which establish the complex and elaborate procedures for handling disciplinary proceedings. Their Lordships have no doubt that the vocabulary must be consistently construed in the absence of express statutory direction to the contrary: for the use of the vocabulary is no accident, but is plainly a deliberate choice of the legislature. A significant inclusion in the Act's vocabulary is the term with which this appeal is concerned, namely "the written application or complaint" relating to the professional conduct of a solicitor.

Solicitors are officers of the Supreme Court and subject to the control of the Supreme Court: sections 83 and 84. They are liable on due cause shown to be struck off the roll or suspended from practice for a period of years or censured: section 84(1). These penalties, as later sections make abundantly clear, can be imposed only by the Supreme Court.

The procedures established by the Act are

elaborate. They may conveniently be considered in four stages:–

I Initiation (section 86);
II Inquiry by an Inquiry Committee; (sections 85, 87-89);
III Appointment of and hearing by a Disciplinary Committee; (sections 86(5), 90-93 and 96);
IV Cause proceedings in the Supreme Court (sections 94, 97 and 98)

Stage I – Initiation

Proceedings are initiated pursuant to section 86. There are four ways in which this can be done. First, any person can make an application or complaint which is in the first place to be made to the Society and is to be referred by the Council to the Inquiry Committee: sub-section (1). Secondly, any judge of the Supreme Court or the Attorney-General may refer any matter relating to the professional conduct of a solicitor to the Society, and the Council "*shall* issue" a written order to the Inquiry Committee: sub-section (2). Thirdly, whenever a solicitor has been convicted of a criminal offence involving fraud or dishonesty (this case), the Council "*shall* forthwith apply to the Chief Justice to appoint a Disciplinary Committee which *shall* hear and investigate the matter": sub-section (5). Fourthly, the Inquiry Committee may decide of its own motion to inquire into any matter: section 87(1) (b). Three of these initiatives are rights available to persons or bodies who choose to commence proceedings, namely the application or complaint by any person under section 86(1), the reference under section 86(2) and the "own motion" decision of the Inquiry Committee. The fourth permits of no option: given the conviction, there is a statutory duty laid by section 86(5) upon the Council of the Society to move forthwith without inquiry to the third stage of the procedure, the appointment of a Disciplinary Committee.

Stage II – Inquiry

This is the stage which is by-passed by section 86(5) where there is a conviction. It follows upon application or complaint, reference, or by decision of the Inquiry Committee itself. The inquiry is conducted by the Inquiry Committee which is a standing committee of solicitors appointed by the Chief Justice under section 85. The Committee is an independent body whose duty is set out in section 87. Sub-sections (1) and (2) are couched in the distinctive vocabulary of Part VII to which their Lordships have already adverted. The sub-sections are in these terms:-

"87. (1) Where the Inquiry Committee has –

(a) received a written order;

(b) decided of its own motion to inquire into any matter; or

(c) received a written application or complaint and is satisfied that there may be grounds for such an application or complaint,

it shall inquire into and investigate the matter and report to the Council on the matter.

(2) The Inquiry Committee shall also report to the Council where the Inquiry Committee is satisfied that there are no grounds for such an application or complaint."

Their Lordships draw attention to the section's identification of the three options which impose the duty of inquiry and report, namely the written order which follows upon a reference which itself is an option, the "own motion" decision, and the written application or complaint. The word "written" appears in the description of the third option mentioned in the section, because an application or complaint under section 86(1), if it is to entitle the applicant or complainant to require an inquiry as of right, must be in writing. And, if it is in writing, certain consequences follow: see section 86(3) and (4).

The Inquiry Committee reports to the Council. The Council must consider the report and is under a duty to make a determination. Section 88 sets out the four possible determinations in sub-section (1):-

"(a) that a formal investigation is not necessary; or

(b) that no cause of sufficient gravity exists for a formal investigation but that the advocate and solicitor should be ordered to pay a penalty under section 89 of this Act; or

(c) that there should be a formal investigation by a Disciplinary Committee; or

(d) that the matter be referred back to the Inquiry Committee, or adjourned for consideration."

Stage III – Appointment of and Hearing by a Disciplinary Committee

If the Council determines that there should be a formal investigation, the Council shall forthwith apply to the Chief Justice to appoint a Disciplinary Committee which shall hear and investigate the matter: section 90. The inquiry procedure at this point joins the criminal conviction procedure: the Council's application under section 90 is "*pari passu*" with the Council's application under sect-

ion 86(5) and the wording of the two provisions follows the same pattern.

If the Council determines that no cause of sufficient gravity exists for a formal investigation, it may impose a financial penalty: section 89. But, whether it does or not, section 96 provides a procedure for dissatisfied complainants to obtain a review of the Council's determination. Section 96 is in these terms:-

"96. (1) Where a person has made a written application or complaint to the Society and the Council has determined –

(a) that a formal investigation is not necessary; or

(b) that no sufficient cause for a formal investigation exists but that the advocate and solicitor concerned should be ordered to pay a penalty,

that person, if he is dissatisfied with the decision, may within fourteen days of being notified of the Council's determination apply to a judge under this section.

(2) Such an application shall be made by originating summons and shall be accompanied by an affidavit or affidavits of the facts constituting the basis of the application or complaint and by a copy of the application or complaint originally made to the Society together with a copy of the Council's reasons in writing supplied to the applicant under sub-section (2) of section 88 of this Act.

(3) The application accompanied by a copy of each of the documents referred to in sub-section (2) of this section shall be served on the Society.

(4) Upon the hearing of the application the judge may make an order –

(a) affirming the determination of the Council; or

(b) directing the Society to apply to the Chief Justice for the appointment of a Disciplinary Committee,

and such order for the payment of costs as may be just.

(5) If the judge makes an order directing the Society to apply to the Chief Justice for the appointment of a Disciplinary Committee the applicant shall have the conduct of proceedings before the Disciplinary Committee and any subsequent proceedings before the court under section 98 of this Act, and any such proceedings shall be brought in the name of the applicant."

It was not suggested by the Society that upon the true construction of this section the Society could be a person who has made a written application or complaint. The Society accepted that it could not invoke the section, even though it might be dissatisfied with its own Council's determination. The High Court was of the same opinion. Their Lordships agree. The relevance of the section to this appeal (which of course is concerned with section 97) is its wordings. The section is, *mutatis mutandis*, drafted in the same style as section 97 and makes use of terms, words, and phrases which recur with frequency in other sections of Part VII of the Act. The section's procedure is available to "a person who has made a written application or complaint to the Society" and is dissatisfied with the determination of the Council upon consideration of the report of the Inquiry Committee. If the applicant's appeal succeeds, the court will order the Society to apply for the appointment of a Disciplinary Committee but at the same time will also order that the applicant, not the Society, shall have the conduct of the proceedings before the Committee. There can be no doubt that the section confers a right to invoke its appeal procedure only upon a person who has made an application or complaint under section 86(1) of the Act and who has put it into writing.

Consideration of the stages leading to an application by the Society to the Chief Justice to appoint a Disciplinary Committee reveals that the Society's application is an obligatory step to a Supreme Court hearing in those cases where the statute requires a hearing by a Disciplinary Committee: sections 86(5), 90 and 96(4). These are cases in which it has been established by full inquiry or by the existence of a criminal conviction involving dishonesty that a hearing by a Disciplinary Committee is necessary in order to determine whether or not consideration should be given by the Supreme Court to the question whether action should be taken against the solicitor under section 84(1). If the Council has determined under section 88 that there should be a formal investigation or the Court on appeal makes a direction under section 96(4) or if the Council has had to act under section 86(5), the application to the Chief Justice is mandatory. In no case does the Society have an option: it acts because it must, pursuant to its statutory duty, in the circumstances which have arisen.

When the Chief Justice appoints a Disciplinary Committee, he does so for a specific task, namely that of hearing a particular matter. The Disciplinary Committee is not a standing but an *ad hoc* committee. It consists of solicitors who have in force a practising certificate: section 91. Its duty is stated in section 93. After hearing and investigating the matter referred to it the Committee shall record its findings of fact and determine either –

(a) that cause of sufficient gravity for disciplinary action exists under section 84; or

(b) that while no such cause exists, the solicitor

should be reprimanded (this case); or

(c) that cause exists for action under section 84(1).

The committee must embody its findings and determination in a report which goes to the Chief Justice, *the Society*, the solicitor concerned, and "*the person who made the application or complaint*" (emphasis supplied): section 93(3).

Stage IV – Cause Proceedings

If the Disciplinary Committee determines that cause exists, the Society is required by section 94(1) without further direction to make an application to the Supreme Court under section 98 for an order calling upon the solicitor to show cause why he should not be dealt with under section 84(1). If on the other hand the Committee determines that no sufficient cause exists, the Society is not obliged to take any further action unless directed by the Court: section 94(2). In the present case the Committee determined that no sufficient cause exists: but the Court has acted under section 97 upon the Society's application, and has set aside the Committee's determination and has directed the Society to make application under section 98 for an order calling upon the solicitor to show cause.

Section 97 is available only "to the person who made the written application or complaint" and is dissatisfied with the determination of the Committee. If the vocabulary of Part VII is to be consistently applied, these words limit the availability of the section to a person making an application or complaint in writing under section 86(1) of the Act. This view of the availability of the section is supported by sub-section (2) which provides that an application under the section for a review of the Committee's determination and an order directing an application under section 98 "shall be served on the Society".

If an application can be made under section 97 and the Court directs cause proceedings under section 98, the Court hears the case under section 98 as it would have done had the Committee determined under section 93 that cause for disciplinary action under section 84(1) exists. A court of three judges of whom the Chief Justice must be one hears the cause proceedings, determines whether disciplinary action under section 84(1) is required and makes the appropriate order.

Conclusion

In the present case the High Court recognised that the key words in section 97(1) were capable of two meanings. They could be construed, in the Court's view, either consistently with section 96(4) as limiting the availability of the section to persons making a written application or complaint under section 86(1) or as including the Law Society in its capacity as applicant under section 86(5) for the appointment of a Disciplinary Committee. The Court chose the wider meaning as being "consistent with the smooth working" of the statutory system. Their Lordships understand the concern of the High Court: but in their view the language of Part VII is too strong and clear to permit of a policy interpretation of the words in section 97(1) which ignores the legislature's deliberate and consistent use of the term "application or complaint" as indicating an application or complaint made by a person under section 86(1) of the Act. Their Lordships have already analysed the relevant parts of sections 86, 87, 96 and 97. But there are other indications pointing also in favour of the more limited meaning, notably sections 88(2), 92(2), 93(3) and 99. The true position is that the Society, or its Council, in applying for the appointment of a Disciplinary Committee, is not exercising a right of application or complaint but is performing a statutory duty laid upon it in circumstances specified by the statute. In this respect section 86(5) is identical in its effect with sections 90 and 96(4).

For these reasons their Lordships allowed the solicitor's appeal. The order of the High Court striking the solicitor off the roll must be set aside. The determination of the Disciplinary Committee stands. The Society must pay the solicitor's costs in the High Court and in the appeal to the Judicial Committee.

Appeal allowed.

Solicitors: *Cameron Markby; Norton Rose Botterell & Roche.*